IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4541 OF 2005

Laxman Thakaji Khetade, since deceased,
through his Legal Representatives:
1a) Suresh Laxman Khetade & Ors. : Petitioners
(Orig.Defendants)

V/s.

Gangadhar Nivrutti Kathe & Ors. : Respondents
(Nos.1 to 3 - Orig.
Plaintiffs, Nos.4 & 5-
Orig. Defendants)

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Mr.M.S.Karnik for the petitioners.
None present for the respondents.

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CORAM : S.A. BOBDE, J.

August 3, 2005.

P.C.:

1. The petitioners, who are the defendants, have challenged the order dated 19.4.2005 passed by the Joint Civil Judge, Junior Division, Nashik, refusing amendment.

2. The plaintiffs filed a suit for specific performance. In this suit, the plaintiffs sought an amendment that the petitioners who are the defendants are not adivasis and,

therefore, permission of the Collector is not necessary. This amendment has been allowed.

3. Mr.Karnik, the learned counsel for the petitioners, submitted that earlier the respondents had alleged that the petitioners are adivasis and, therefore, cannot contend to the contrary.

4. I have perused the application for amendment and it appears that the respondents have stated that they subsequently came to know that the petitioners are not adivasis. In any case, the amendment does not change the nature of the suit which remains a suit for specific performance. Undoubtedly, whether specific performance can be granted in such a case has to be gone into by the Court, having regard to the law in force which includes the law which prohibits selling of land by tribals to non-tribals. In this view of the matter, I see no reason to interfere. All contentions of the petitioners, including such objection as they may have to the jurisdiction of the Court are left open. The petitioners are at liberty to challenge the jurisdiction of the Court as may be advised, in accordance with law.

5. Accordingly, the Writ Petition is dismissed.

S.A. BOBDE, J.